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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,356	08/21/2001	Dale E. Koop	CTC-401	7685

7590 01/13/2006

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EXAMINER	
FARAH, AHMED M	
ART UNIT	**PAPER NUMBER**
3735	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/934,356	KOOP, DALE E.	
	Examiner	Art Unit	
	Ahmed M. Farah	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-3 and 6-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 6-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yavitz et al. U.S. Patent No. 6,312,450 in view of Rodgers et al. U.S. Patent No. 6,455,501.

Yavitz et al. disclose a system and method for improving the texture and appearance of patient's skin, the method comprising the steps of: treating a subsurface layer of the skin with a source of energy sufficient to cause stimulation of collagen biosynthesis without thermal damage to the epidermis (see the abstract; col. 2, line 66 to col. 3, line 10; col. 4, lines 62-66; and col. 6, lines 3-5); and applying to the skin a light transport modifier, which in turn helps post treatment healing of tissue (see col. 5, lines 16-19). As to claim 3, Examiner notes that the method for periodic treatment over a given duration, such as days, weeks or months is well known in the medical art.

However, although Yavitz et al. emphasize the importance of shortened healing time, they do not particularly teach the use of a wound healing composition as claimed. Rodgers et al. teach an alternative skin treatment in which a wound healing composition is used. Thus, it would have been obvious to one skilled in the art at the time of the

applicant's invention to modify Yavitz et al. in view of Rodgers et al. and use a wound healing composition in order prevent infection and substantially reduce healing time of the tissue being treated.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yavitz et al. in view of Rodgers et al. as applied to claims 1-3 and 7-11 above, and further in view of O'Donnell, Jr. U.S. Patent 6,106,514.

Neither Yavitz et al. nor Rodgers et al. teach the use of mechanical energy to provide the treatment. O'Donnell, Jr. discloses apparatus and method for treating subsurface layer of skin, the method comprising the steps of applying mechanical energy to tissue being treated. Hence, at the time of the applicant's invention, one skilled in the art would have used mechanical energy, in addition to the photonic energy, so as to enhance treatment of the skin.

Response to Arguments

Applicant's arguments filed on October 26, 2005, have been fully considered but they are not persuasive. The applicant makes the following arguments:

1. The applicant argues that the prior art of record fails provide a motivation or suggestion to combine the references and therefore fails to teach a prima facie case of obviousness.

In response to this argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary

reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F .2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

2. The applicant further argues that the prior art of record, Rodgers et al. in particular, fails to teach a method of treating photodamaged skin, such as wrinkles. The applicant further argues that Rodgers et al is directed to a method for treating a damaged, wound, lacerated and/or opened tissue.

In response to this argument, Rodgers el al clearly teach a method of treating a photo-damaged skin, the method comprising the step of directing a treatment light along a portion of the epidermis to heat an area of tissue beneath said portion (see col. 2, lin66 through col. 3, line 10).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ali Imam can be reached on (571) 272-4737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah
Primary Examiner
Art Unit 3735

January 8, 2006.